

**From:** [Piehl, Jacob](#)  
**To:** [Quinones, Edwin](#)  
**Subject:** Re: Citgo Lit Hold  
**Date:** Thursday, January 24, 2013 8:06:33 AM

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Thanks Ed. Your emails should be enough to get me started.

Jacob Piehl, Assistant Regional Counsel

Office of Regional Counsel

U.S. Environmental Protection Agency, Region 6

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NOTICE: This communication may contain privileged or otherwise confidential information. If you are not the intended recipient, or believe you have received this communication in error, please delete the copy you received, and do not print, copy, re-transmit, disseminate or otherwise use the information. Thank you.

From: Edwin Quinones/R6/USEPA/US

To: Jacob Piehl/R6/USEPA/US@EPA

Date: 01/23/2013 05:37 PM

Subject: Re: Citgo Lit Hold

Hi Jake,

Like I mentioned in my earlier e-mail, I couldn't find a lit hold in the link you provided below for the CITGO case. So my attempt at drafting some language to include in the EnCase database is as follows:

**Document Preservation/Litigation Hold Instructions: U.S. v. CITGO:** The United States Environmental Protection Agency (EPA or Agency) will preserve any potentially relevant information, including electronically stored information (ESI) , hard copies of documents, and tangible things, pertaining to the above-referenced matter/case in anticipation of actual preservation obligations (owing to a reasonable anticipation of civil litigation), potential preservation obligations, or as a precautionary measure. This matter involves violations of the Clean Water Act for a discharge

of oil into Indian Marais, a tributary of the Calcasieu River, and the



9548847

Calcasieu River, near Lake Charles, Calcasieu Parish, Louisiana on or about June 19, 2006, The EPA is seeking civil penalties and injunctive relief. Until you are notified otherwise, do not destroy potentially relevant information pertaining to this matter/case, including the topics listed herein.

## **The Duty to Preserve Potentially Relevant Information**

Because federal case law imposes or may impose an obligation on EPA and its employees to preserve potentially relevant information, **you personally must take appropriate steps to preserve such information that is in your possession, custody, or control. You must preserve this information even if it otherwise could be destroyed, deleted or overwritten in the normal course of Agency operations. If information that is subject to a litigation hold is destroyed, a court in some circumstances may impose sanctions, including, but not limited to, adverse inferences against the Agency, monetary sanctions, exclusion of evidence, and/or dismissal of the case.**

## **What Must Be Preserved**

The information that must be preserved includes ESI, hard copies of documents, and tangible things (e.g., laboratory samples, specimens, and photographs) related to the subject matters set forth above, including privileged information. ESI includes, but is not limited to, computer files of any type (e.g., word processing documents, e-mail messages, spreadsheets, calendar entries, images, floppy disks, CDs, DVDs, and flash memory media including USB drives and memory cards for cameras and cell phones). It includes not only information stored on EPA computers but also can include information stored on home computers, personal laptop computers, personal digital assistants (PDAs) such as Palm Pilots and Blackberries, and mobile phones, if used for EPA work.

## **What You Need to Do to Preserve Potentially Relevant Information**

You must take the following steps with respect to the above-described materials. Please contact Amy Salinas, Office of Regional Counsel, 214-6650-8063, if you need assistance with any of these steps.

1. Do not delete, throw out, shred, or otherwise destroy potentially relevant information, or allow deletion to happen by automatic deletion operations.
2. Maintain relevant ESI, including, but not limited to, word processing

documents, spreadsheets, incoming and outgoing e-mails, and data in databases. You should take steps to ensure that appropriate "metadata" (internal computer data) is retained with the ESI. If you do not understand what this involves, please call Edwin Quinones at 214-665-8035. Also, the failure to update certain critical databases that support the Agency mission, but which contain relevant ESI, can adversely impact ongoing business operations. You should expeditiously identify for the lead attorney on this matter any critical databases to determine what steps, if any, need to be taken to ensure the preservation of relevant data without adversely disrupting ongoing operations.

3. Take affirmative steps to prevent the destruction of any potentially relevant information that has been transferred to a Federal Records Center or any other location.

4. Do not transfer any potentially relevant information to a Federal Records Center or any other location unless Edwin Quinones at 214-665-8035 agrees that the information: (a) will be adequately preserved after being transferred; and (b) is not needed in its present location for purposes of the case/matter.

5. Before any computer or electronic system is retired or upgraded, or before an old computer or hard drive is retired or reimaged, contact Amy Salinas at 214-665-8063 so that s/he can ensure that EPA retains access to potentially relevant information after the retirement or upgrade.

6. Contact Amy Salinas at 214-665-8063 if there are any staffing changes in your office that affect this case/matter, such as the retirement of people who have done work related to the case/matter or hiring of new or additional people doing work relating to the case/matter.

7. Treat non-identical copies of documents (word processing files, spreadsheets, etc.) as if they were unique and save, at a minimum, the latest version and all versions that were shared with others. Work with DOJ to determine which other intermediate drafts (e.g., drafts containing tracked changes), if any, to save.

8. If potentially relevant ESI (including e-mail, computer files, etc.) has not been preserved, then immediately contact Edwin Quinones at 214-665-8035. Under some circumstances, IT staff may be able to retrieve information.

9. Maintain information subject to the litigation hold in an orderly, readily

retrievable manner, keeping confidential and/or privileged information separate from publicly releasable information, and be prepared to provide materials subject to this litigation hold for review and/or production as needed for case development, settlement discussions, alternative dispute resolution, preparation of privilege logs, discovery, pretrial activities, and trial.

10. If you need to comply with an e-mail space quota, do not delete potentially relevant e-mail or move it from the e-mail system. You may move the potentially relevant information to an existing archive within the e-mail system if that archive exists on a network hard drive and will not be subject to accidental deletion. If you do not know if your archive meets these criteria, or if you need to create an archive, do not delete or move anything, and contact Edwin Quinones at 214-665-8035, who will obtain assistance for you.

11. If you need to work with any information subject to this hold, you must create a copy of the original, preserve the original and work from the copy. Note that opening an electronic document can change the document's metadata. You must take appropriate steps to, if practicable, create your copy without changing the document's metadata. If you are unsure how to do this contact Edwin Quinones at 214-665-8035, who will obtain assistance for you.

12. Please review the list of recipients of this Litigation Hold. If you are aware of other people not listed who have worked or are working on this case/matter, or whom you otherwise believe may have custody or control of potentially relevant information, immediately contact Edwin Quinones at 214-665-8035.

In the future, you may receive additional instructions for producing this information. In the meantime, maintain information subject to the litigation hold in an orderly, readily retrievable manner. Set up electronic and hard copy folders to preserve relevant information that you generate, including electronic communication, and establish separate files for confidential and public information. In addition, a special Lotus Notes database has been established to allow you to copy your responsive e-mails into this database. This will ensure that responsive e-mails are maintained in a central location and will allow EPA to delete duplicates and to sort the e-mails by time, date, sender, and recipient. You will receive a copy of the link to this database with instructions.

Thank you in advance for your cooperation in this case/matter. If you have any questions regarding which materials should be preserved or how they should be preserved, or suggestions, please do not hesitate to contact Edwin Quinones at 214-665-8035.

We will contact you when these materials no longer need to be preserved.

Edwin M. Quinones

Assistant Regional Counsel

US EPA Region 6, 6RC-S

1445 Ross Ave.

Dallas, TX 75202

214-665-8035

214-665-6460 fax

From: Jacob Piehl/R6/USEPA/US

To: Edwin Quinones/R6/USEPA/US@EPA

Date: 01/23/2013 04:53 PM

Subject: Citgo Lit Hold

Ed:

See if you can find Citgo info in this list: [http://region6.epa.gov:9876/06Reg/R6Adviso nsf/Litigation? OpenView&Start=1](http://region6.epa.gov:9876/06Reg/R6Adviso%20nsf/Litigation?OpenView&Start=1) (Hit "Previous" to go further back).

If for any reason the lit hold wasn't republished on the html site, and you can't find a record in your emails, could you please provide me with a copy of the language for me to include in the EnCase database. Below is a sample from another OPA case. Thank you.

**Category:     Litigation**

**Title: Document Preservation/Litigation Hold Instructions: Superior Crude Gathering, Inc.**

Contact: **Amy Salinas, 6RC-S, 214.665.8063**

▪ December 4, 2012

**Document Preservation/Litigation Hold Instructions: Superior Crude Gathering, Inc.:** The United States Environmental Protection Agency (EPA or Agency) will preserve any potentially

relevant information, including electronically stored information (ESI) , hard copies of documents, and tangible things, pertaining to the above-referenced matter/case in anticipation of actual preservation

obligations (owing to a reasonable anticipation of civil litigation), potential preservation obligations, or as a precautionary measure. This matter involves violations of the Clean Water Act for a discharge

of oil in Ingleside, San Patricio County, Texas on or about February 9, 2010, Spill Prevention Control & Countermeasures violations and Facility Response Plan violations. The EPA is seeking civil

penalties and possible injunctive relief. Until you are notified otherwise, do not destroy potentially relevant information pertaining to this matter/case, including the topics listed herein.

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